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5	UNITED STATES DISTRICT COURT
6	DISTRICT OF NEVADA
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8	HELMUTH LEHMANN,)
9	Plaintiff,) 3:12-cv-0097-LRH-VPC v.
10	LIFE INSURANCE COMPANY OF NORTH) ORDER
11	AMERICA,
12	Defendant.
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14	Before the court is defendant Life Insurance Company of North America's ("LINA")
15	renewed motion to dismiss. Doc. #17.1 Plaintiff Helmuth Lehmann ("Lehmann") filed an
16	opposition (Doc. #19) to which LINA replied (Doc. #29).
17	I. Facts and Procedural History
18	Plaintiff Lehmann is a former employee of non-party Bertelsmann, Inc. ("Bertelsmann") in
19	Reno, Nevada. While employed at Bertelsmann, Lehmann was covered under a group disability
20	insurance policy.
21	On July 14, 2010, Lehmann was terminated. After his termination, Lehmann submitted an
22	application to LINA to convert his group health coverage to an individual disability insurance
23	policy which LINA approved. In November 2010, Lehmann submitted a long term disability claim
24	under the converted policy. LINA denied the claim contending that Lehmann was not eligible to
25	convert his group coverage policy to an individual policy and that it had issued the individual
26	Refers to the court's docket entry number.

policy in error. 1 2 Subsequently, Lehmann filed a complaint for breach of contract and other state law claims. 3 Doc. #1, Exhibit B. In response, LINA filed a motion to dismiss (Doc. #12) which was denied by 4 the court to allow Lehmann to file an amended complaint (Doc. #15). 5 On July 26, 2012, Lehmann filed an amended complaint alleging claims under the 6 Employee Retirement Income Security Act of 1974 ("ERISA"), as well as state law claims. 7 Doc. #16. Thereafter, LINA filed the present renewed motion to dismiss. Doc. #17. 8 II. Discussion 9 In its renewed motion to dismiss, LINA argues that Lehmann's state law claims are 10 preempted by ERISA and should therefore be dismissed. See Doc. #17. Specifically, LINA argues 11 that the underlying right to convert the group coverage to an individual policy is governed by 12 ERISA, and therefore, the issue before the court is whether Lehmann had a right to convert his 13 group policy to an individual policy. 14 The court agrees that ERISA governs whether the group coverage policy was properly 15 converted to an individual policy. However, the court also finds that if the group policy was 16 properly converted to an individual policy, then the alleged state law claims would not be 17 preempted. See Waks v. Empire Blue Cross/Blue Shield, 263 F.3d 872, 877 (9th Cir. 2001) (holding 18 that state-law claims arising under a converted policy are not preempted by ERISA). Further, the 19 court cannot, based solely on the allegations in the complaint, find that Lehmann did not have a 20 properly converted individual policy. Accordingly, the court shall deny LINA's renewed motion to 21 dismiss. 22 IT IS THEREFORE ORDERED that defendant's motion to dismiss (Doc. #17) is DENIED. Aldrihe 23 DATED this 27th day of November, 2012. 24 25 LARRY R. HICKS

UNITED STATES DISTRICT JUDGE

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